

TO: Files

CC: San Diego Audit Committee

FROM: Willkie Farr & Gallagher LLP

RE: Interview of Richard Duvernay on May 10, 2006

DATED: May 10, 2006

On May 10, 2006, Sharon Blaskey and Michael Shapiro, in Willkie Farr & Gallagher LLP's capacity as counsel to the Audit Committee, interviewed Richard Duvernay, Former Assistant City Attorney in the City of San Diego City Attorney's Office, at the City Administration Building, 202 C Street in San Diego, in a conference room on the third floor. Mr. Duvernay was not represented by counsel.

The following memorandum reflects my thoughts, impressions, and opinions regarding our meeting with Richard Duvernay, and constitutes protected attorney work product. It is not, nor is it intended to be, a substantially verbatim record of the interview.

Warnings

Ms. Blaskey began the interview by explaining the circumstances and purpose of the City of San Diego's (the "City") creation of the Audit Committee, noting that information obtained during the course of the interview would be used, if relevant, in the Audit Committee's eventual report. Ms. Blaskey explained that Willkie does not represent Mr. Duvernay and, thus, statements made during the interview are not covered by the attorney-client privilege. Nonetheless, we would be treating the information obtained during the interview as confidential, covered by the work-product privilege during the investigation, but any such privilege would likely be lost with the release of the Audit Committee's report. Ms. Blaskey asked that Mr. Duvernay keep the interview confidential. Ms. Blaskey further explained that, if requested, we would provide information from the interview to the SEC, the U.S. Attorney's Office or the City's outside auditor, KPMG, so it is important that Mr. Duvernay be accurate and truthful. Ms. Blaskey emphasized that Mr. Duvernay should seek clarification of any question at any time. Mr. Duvernay said that he learned that the City Council waived attorney-client privilege and as long as they have done so, he was willing to speak freely with us.

Background

Mr. Duvernay said that he began working at the City Attorney's Office in June of 1989. He worked in the Criminal Division for a year and a half and then worked in the Civil Division for one year in an advisory role, working with Lori Chapin who was lead advisor to the retirement system. He then worked on redevelopment and land use planning issues. Through this position, he worked with other departments, including the Metropolitan Wastewater Department (the "MWWD"). He said his involvement with the MWWD was on a program

called the Multiple Species Program and was unrelated to sewer rate setting. In 2000, he began working for the Ethics Commission and worked with the Commission for about two years. He then transitioned from the Ethics Commission when Leslie Devaney (Assistant City Attorney) ran for City Attorney and he was put in charge of supervising the attorneys she formerly supervised. He also worked with Les Girard (Assistant City Attorney) on coordinating the City's response to the SEC inquiry when it was initiated. When Michael Aguirre became City Attorney, Mr. Duvernay left the City Attorney's Office and he is the City Attorney of Redding, California.

Wastewater

Awareness of Noncompliance

Ms. Blaskey asked Mr. Duvernay if he was aware of an issue concerning the City's noncompliance with State requirements involving the City's sewer rate structure. He said he was vaguely aware of an issue concerning the need to revise the City's rate structure because of proportionality requirements. Ms. Blaskey asked Mr. Duvernay if he recalled when he became aware of the City's noncompliance. He responded that he did not recall when he first became aware it and did not recall whether Kelly Salt had told him the City was not in compliance. Ms. Blaskey asked Mr. Duvernay if he was aware of Kelco's involvement with the issue. He recalled there was an issue with Kelco that Kelly Salt was very involved with. Mr. Duvernay added that he thinks it is not unusual for governments to take years to comply with such requirements since they require outreach, education and studies to be conducted.

Pension

The Ethics Commission

Ms. Blaskey asked Mr. Duvernay to explain how the Ethics Commission was formed. He responded that its formation was one of Mayor Murphy's ten goals because of a scandal involving former Councilwoman Stallings. He commented that reform tends to follow scandal. In 1997, Councilmember Stallings was forced to vacate her seat because of ethical violations involving the Padres. From what he recalled, he said she had befriended the President of the Padres and received and took advantage of a "friends and family offer" regarding a stock the President was involved in, which triggered a conflict. She had also accepted plane tickets and the use of a retreat the President owned. The Councilwoman ultimately plead to a misdemeanor.

Mr. Duvernay noted that the current Council consists of "reform candidates" who ran on platforms to clean up government. They campaigned against the Chargers ticket guarantee and were "anti-city corruption." When Mayor Murphy was elected, Murphy had a small team review the Municipal Code and create the Ethics Commission. The team included John Kern (Mayor Murphy's Chief of Staff) and Lisa Foster (former member of Mayor Murphy's staff). They created an ordinance to establish the Commission and Mr. Duvernay was assigned to work on it.

Ms. Blaskey asked Mr. Duvernay to discuss his responsibilities related to the Ethics Commission. Mr. Duvernay said that his responsibilities included drafting an ethics

ordinance and addressing the Commission's enforcement process. The role of the Commission was three-fold: (1) enforcement: enforcing the ethics rules; (2) advice: advising employees; and (3) education: creating a training program and workshops. The ethics ordinance defined and established these themes. In substance, it effectively implemented and enforced the Political Reform Act and other rules (e.g. conflicts, gifts, revolving door, Section 1090) at the local level. Ms. Blaskey asked Mr. Duvernay to describe the training provided by the Ethics Commission. He said that there were two types of training: rules based (creating and following rules) and values (focusing on instilling values). The Ethics Commission hired a Professor from the University of California at San Diego to provide both kinds of training. Mr. Duvernay noted that there was a new California law that required two hours of ethics training for all public officials. Stacy Fulhorst was in charge of the Ethics Commission, and Steven Ross assisted her.

Ms. Blaskey asked Mr. Duvernay who received training from the Commission. He said that everyone under the jurisdiction of the Commission was required to receive training. The Commission's jurisdiction included every public official on any board or commission who was a filer (a filer is a person in a position to exercise discretion) and all unclassified City employees (mid-level management and above not represented by a union). As part of the training, a PowerPoint presentation was provided individually to Council members and their staff, as well as to the Mayor and his staff. Ms. Blaskey asked Mr. Duvernay who participated in the training. He said that the Professor conducted these trainings and he (Duvernay) attended almost every one, as did Charlie Walker, Director of the Ethics Commission. Most questions posed by the participants of the sessions concerned gifts, event requests, and campaign issues. Another issue that was raised involved tickets to a Superbowl party that had been provided to Council members and staff.

Ms. Blaskey asked Mr. Duvernay whether California Government Code Section 1090 was discussed in the training. He responded that while it was part of the training, it was not covered in great detail. On this issue, he believed the training included the real life example of Councilmember Stallings. Les Girard had directed that the Council had to reapprove the Padres contract.

Ms. Blaskey asked Mr. Duvernay what type of disclosure-related training Council received. He said he was only aware that the Council received any disclosure training because it was discussed in the context of Vinson & Elkins's ("V&E") investigation. In February 2004, he received the subpoena from the U.S. Attorney's Office. Ms. Blaskey asked Mr. Duvernay involvement in V&E's engagement. He said he had not been involved with hiring V&E to do its investigation or involved in conversations about V&E's conflicts.

He volunteered that San Diego had a campaign control ordinance that governed local elections. The Ethics Commission policed and monitored campaign issues. Mr. Shapiro asked Mr. Duvernay if corporations contributed to candidates in San Diego. He responded that under San Diego law, corporations cannot make donations, only individuals can. While State law mandated that any campaign contribution over \$100 be filed with the City Clerk, the Ethics Commission established a local rule that mandated there be an extra filing be made twenty-four hours before the election.

MP1

Ms. Blaskey asked Mr. Duvernay to discuss his involvement with MP1. He replied that MP1 required that the Municipal Code be amended. Since Lori Chapin, who had been with the City Attorney's Office, had left to become independent counsel for SDCERS, there was no member of the City Attorney's Office who remained, with a retirement system background to amend the Code, so he was assigned to do it. He worked with Cathy Lexin (Human Resources Director), Larry Grissom (SDCERS Administrator), and Lori Chapin (Assistant City Attorney) and others to: (1) codify the language, and (2) process the ordinance that implemented the benefit aspects of MP1. Ms. Blaskey asked Mr. Duvernay if he worked with anyone else at the City Attorney's office on these issues. He said that he doubted it, but that he may have worked with Sharon Marshon. He did not work with John Kaheny (Assistant City Attorney) because Kaheny left when Casey Gwinn became City Attorney. He said he is not aware of the background of MP1 and based on what he knew at the time, it did not raise concerns about its legality.

Docketing Process

Mr. Duvernay said that Stu Swett at the City Attorney's Office had been in charge of processing the docket as well as advising the Auditor and Treasurer's Offices on docketing procedure. Swett retired when Devaney left, and Mr. Duvernay was assigned to take over Swett's docketing responsibilities.

City Attorney Standing Meetings

Mr. Duvernay said that on Monday mornings, the City Attorney held meetings that lasted about thirty minutes, any advisory lawyer who had an item on the docket for the upcoming Council meetings would attend. The purpose of these standing meetings was to brief the City Attorney about any legal issues regarding a pending item or simply to advise if an item was "noncontroversial and routine." If the item was complicated, the advisory lawyer would provide additional detail and may even schedule a private meeting with the City Attorney, if necessary. Ed Plank, the Manager's Liaison, would also attend the Monday morning meetings. He noted that the City Manager held similar weekly meetings on Thursday afternoons before Council meetings, attended by a representative of the City Attorney's Office. There, individuals would brief the City Manager on specific items. There was also a Council briefing for Council's staff, which Mr. Duvernay attended. The Council staff briefing was held on Thursday mornings, and Plank also ran it. The Council staff briefings would cover politics, policy and community issues, while the Manager's briefing was intended to inform the Manager's recommendation to the Council. He volunteered that Gwinn was "very smart" and "good," and that former City Attorney John Witt was also "good." He stated his belief that they understood their proper role and acted ethically.

Ms. Blaskey asked Mr. Duvernay if he recalled if there were discussions about whether MP2 during the City Attorney's Office standing meetings. He stated that the salary ordinance, Memorandum of Understanding, and other items related to MP2 would likely have been discussed. Ms. Blaskey asked Mr. Duvernay if he could recall the content of those discussions and he said he could not. Mr. Duvernay also described a process referred to as "walk arounds," where a member of the City Attorney's Office would visit the Council members

individually to discuss a docket item. Generally, these occurred when matters were of such importance or controversy that individual meetings with Council members were necessary. He only recalled participating in approximately four walk-arounds during his fifteen years with the City, and they concerned the Multiple Species Conservation Program and the Ethics Commission.

Disclosure

Ms. Blaskey asked Mr. Duvernay about his role in advising the City on its disclosure documents. He said he had limited involvement when Swett left, but only for TANS offerings, on which Mary Vattimo took the lead.

POS

Ms. Blaskey asked Mr. Duvernay about the Council's process for approving a Preliminary Official Statement ("POS"). He said that the Council was provided offering documents like they were provided ordinances and resolutions, usually receiving them on a Wednesday afternoon for a Monday vote. He explained that the San Diego local rule required that the public have access to the documents on the Wednesday before a Monday vote, by 2 p.m. He noted that while financings were probably not treated any differently than anything else, public officials had responsibility for them and had to ask questions about them. Depending upon the Council member, the member would read the POS in its entirety, would not read it at all but have their staff read it in its entirety, or ignore the POS altogether.

The Pension Reform Commission

Mr. Duvernay was shown Exhibit 1, an August 29, 2003 e-mail from Rick Duvernay to Terri Webster, copying Lorraine Chapin and Cathy Lexin re: "Fwd: Heads up." Ms. Blaskey asked Mr. Duvernay to discuss his involvement with the Pension Reform Commission (the "Commission"). He recalled going to the Rules Committee and providing advice and drafting the resolution creating the Commission. He said the Rules Committee decided the parameters of the Commission. He surmised that there would have been a memo from the Mayor or April Boling (Committee member) to the Rules Committee about the scope of the Commission, which would have been tweaked by the Rules Committee. He was not familiar with the events leading up to the creation of the Commission, but was ultimately assigned to work with it. Mr. Duvernay said April Boling was appointed the chair of the Commission. Regarding Mr. Duvernay's role with respect to the Rules Committee, he said he gave it advice regarding conflicting business relationships and acted as its scribe.

Mr. Duvernay was shown Exhibit 2, a September 12, 2003 Resolution R-2004-213 REV, which established the Pension Reform Committee. Ms. Blaskey asked Mr. Duvernay why he was involved with the issue discussed in the email. He said he was involved because Chris Morris (former Assistant City Attorney) took vacation in the summer of 2004 when the Commission's recommendations were being presented to the Rules Committee was ballot measures. The email reflects his concern that Council not try to legislate in an area where the retirement board had plenary authority to act independently of the City. He recalls meeting with Mayor Murphy and Boling about this concern.

Mr. Duvernay was shown Exhibits 3, a July 9, 2004 e-mail from Ron Saathoff to Cliff Williams re: amortization and Exhibit 4, a July 13, 2004 e-mail from Lawrence Grissom to Lori Chapin, Pat Frazer and Rick Duvernay re: "Fwd: Charter Amendment" (attaching a July 13, 2004 e-mail from Rick Duvernay to Larry Grissom, Lori Chapin and Pat Frazier re: "Charter Amendments," which attached a charter amendment). Ms. Blaskey asked Mr. Duvernay to explain the emails, and he recalled that he was questioning whether the Council could legislate the amortization period, and the Attorney General confirmed his opinion that it could not do so. Mr. Duvernay said that he did not recall reading the Commission's final report.

Gleason

Ms. Blaskey asked Mr. Duvernay about his involvement with the *Gleason* litigation. He said he was probably aware that the *Gleason* litigation took place but was not aware of any impact it had on the work of the Commission.

Remediation

Ms. Blaskey asked Mr. Duvernay if he had any ideas regarding remediation. He said that V&E made meaningful and worthwhile recommendations. He stated that San Diego and other municipalities have been awakened in the post-Enron, post-Sarbanes-Oxley world. He did not believe more needed to be done regarding these issues.

Conclusion

Ms. Blaskey asked Mr. Duvernay if he knew of any illegal or improper acts committed by City employees. He said, "no." Ms. Blaskey asked Mr. Duvernay to keep the interview confidential and to contact us if he recalled any new information.

WF&G

3255736

EXHIBIT 1

156952
Important
Vinson & Elkins

Mail

Close

[Previous](#) [Next](#)

From: Rick Duvernay
To: Webster, Terri
CC: Chapin, Loraine; Lexin, Cathy
Date: 8/29/2003 11:07 AM
Subject: Re: Fwd: Heads Up

Terri -

You may recall a memorandum of law our office issued on August 28, 1998 (you can find it posted on the City Attorney Web Page) which has pretty thorough discussion about the relationship of the City Auditor with SDCERS and it explains how to analyze questions about who has the ultimate authority to make decisions on certain issues.

After reviewing this memo (without going through the analysis here) and absent any more particular facts all I can say about your question is that the conclusion is I do not think the Auditor would have legal authority to refuse to cut a disability benefit check if the only reason is because the Auditor voted against granting the disability retirement at the Board.

>>> Terri Webster 08/29/03 09.42AM >>>
Rick and Lori

In this wacky world...please see attached. We (I) want to be prepared in case this question comes up. Practice has been that Ed or after 1993, my, vote in the Board meetings against disabilities have not ever caused the Auditor to not pay a pension.

Do you have any thoughts on this ?I am not asking for a written opinion at this point....

EXHIBIT 2

(R-2004-213 REV.)

RESOLUTION NUMBER _____

ADOPTED ON _____

WHEREAS, during the past several months concern has been expressed about the current unfunded liability of the San Diego City Employees Retirement System [CERS]; and

WHEREAS, the San Diego Taxpayers Association and several City Councilmembers have called for an independent audit of CERS; and

WHEREAS, the Mayor has proposed establishing a Pension Reform Committee pursuant to City Charter section 43 (b); and

WHEREAS, pursuant to Council Policy 000-16, the Pension Reform Committee will adhere to the requirements of the California Brown Act; and

WHEREAS, the Mayor and City Council desire to assure the public that prospective members do not have conflicting business relationships with CERS or the City; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that there is hereby established pursuant to City Charter section 43 (b) a Pension Reform Committee consisting of nine members including a chairperson who shall be appointed by the Mayor and confirmed by the City Council. The composition of the Pension Reform Committee shall be as follows:

- a. Five individuals who are not City employees and not City retirees and who have experience or expertise in defined benefit pension plans; and
- b. One taxpayer advocate, who is not a City employee or City retiree; and

- c. One member of the City Retirement Board who is not a City employee or City retiree; and
- d. One City retiree who is not a member of the City Retirement Board; and
- e. One City employee.

BE IT FURTHER RESOLVED, by the Council of the City of San Diego, to assure that members of the Pension Reform Committee do not have potentially conflicting business relationships with CERS or the City, subsequent to appointment and prior to confirmation, prospective members shall be required to execute an affidavit under penalty of perjury declaring that they do not have any business relationships related to providing financial services to CERS or the City (other than as a member of the Board or member of CERS for those members appointed pursuant to paragraphs c, d, and e) and further, that such prospective member shall refrain from establishing any such business relationship with CERS or the City for a one year period following the dissolution of the Pension Reform Committee.

BE IT FURTHER RESOLVED, by the Council of the City of San Diego, that there is hereby established pursuant to City Charter section 43 (b) the Pension Reform Committee with the following defined objectives:

- a. Report back to the City Council no later than 120 days from the date appointments are confirmed.
- b. After reviewing and considering the scope and depth of audit activity currently being conducted by CERS, conduct any additional or supplemental independent audits, studies, or investigations deemed necessary and appropriate.
- c. Provide recommendations to address any unfunded liability problems of the system.

- d. Examine how the existing pension system has performed compared to other similar systems, including examination of actions other systems have taken to address funding shortfall problems, such as issuance of pension obligation bonds.
- e. Examine whether changes should be made to the existing pension system.
- f. Examine whether the make-up and representative constitution of the Retirement Board should be restructured.
- g. Examine whether the system should be changed from a defined benefit plan to a defined contribution plan for new employees.
- h. Examine whether the City should join the California Public Employees Retirement System or any other retirement system.
- i. Make any other recommendations as appropriate.

BE IT FURTHER RESOLVED, by the Council of the City of San Diego, that the expectation of the Council is for CERS and the Pension Reform Committee to cooperate in the sharing of documents, information, and resources in order for both CERS and the Pension

Reform Committee to efficiently and expeditiously fulfill their respective duties and responsibilities.

APPROVED: CASEY GWINN, City Attorney

By _____
Richard A. Duvernay
Deputy City Attorney

RAD:jab
08/29/03
09/12/03REV.
Or Dept:Rules
R-2004-213

EXHIBIT 3

Clifton Williams - (no subject)

From: <RSAATHOFF@aol.com>
To: <cbwilliams@sandiego.gov>
Date: 7/9/04 4:53PM
Subject: (no subject)

Cliff

Sorry I didn't get this out yesterday. On the fifteen year amortization proposal there are several considerations. One, the shorter the amortization period the higher the cost. Look at it as a fifteen yr. mortgage vs. a thirty yr. mortgage. GASB (general accounting standards board) allows amortization periods up to forty yrs. Some systems have gone as high as fifty years. I'm not recommending forty or fifty. Personally I believe the maximum should be thirty years. The shorter the amortization period the higher the cost to the city. Locking us in to a fifteen year amortization allows no flexibility. What if the market went down 20%? The resulting increase in unfunded liability amortized at fifteen years would increase the cities payments to the city dramatically. Would the PRC suggest that all debt incurred by the city should be a maximum of 15 year amortization? I don't think so.

The PRC will argue that fifteen is necessary because anything shorter has a "negative amortization" for the first several years. This is true if we charge on a level percent of payroll basis (commonly recommended by system actuaries). It is not true if we amortize on a fixed rate basis, similar to a fixed rate mortgage vs. a reverse amortization mortgage. The County just set a 20 yr. fixed amortization for their retirement plans unfunded liability.

The second, most troublesome part of the PRC recommendation is to establish a five year straight line amortization period for the unfunded liability of new benefits. It seems to us that the only purpose of this recommendation is to limit if not eliminate consideration of any new pension benefits. Just as discussed above the shorter the amortization period the higher the payments. Can you imagine a five year mortgage on your home? The payments would be prohibitive.

Lastly I'm not sure this proposal is legal under the state constitution. Rick Duveney seems to allude to this by his addition of the last sentence in the proposed language; "Notwithstanding the above, the Retirement Board shall retain plenary authority and fiduciary responsibility for investment of moneys and administration of the system." I'm having this researched legally and will have an opinion by early next week. If illegal then why go forward?

We appreciate Scott's language on "raiding". This is clearly the core issue. I have a few other things to suggest on the Mayor's proposal and we can talk next week. Hopefully this note gives you what you needed on the amortization proposal. Let me know if you need anything else.

Thanks Cliff,

Ron Saathoff

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7/12/2004

SP_ACM_001650

PETERS000024

EXHIBIT 4

964212

General Invest Hot 4-14-06

Email message text

Object type: [GW.MESSAGE.MAIL]

Item Source: [Received]

Message ID: [40F41938.CCP.MANAGER.100.1707275.1.1A36B.1]

From: [Lawrence Grissom]

To: [Lori Chapin; Patricia Frazier; Rick Duvernay;]

Subject: [Fwd: Charter Amendment]

Creation date: [7/13/2004 6:17:11 PM]

In Folder: [ballot]

Attachment File name: [E:\RemoteOutput\RemoteNTI\pfrazier\10738.1-TEXT.htm]

Attachment File name: [E:\RemoteOutput\RemoteNTI\pfrazier\10738.2-GW.MESSAGE.MAIL]

Message: [

Did you see this one? I didn't look at the attachments on your e-mail. At first blush, it looks ok, except for the POB language. There is to me absolutely no need for the Board to be involved in POB's for any purpose except to receive and invest the proceeds. Am I missing something?

Larry

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964211

General Invest Hot 4-14-06

Email message text

Object type: [GW.MESSAGE.MAIL]

Item Source: [Received]

Message ID: [40F41938.CCP.MANAGER.200.2000003.1.160F54.1]

From: [Rick Duvernay]

To: [Grissom, Lawrence;Chapin, Loraine; Patricia Frazier;]

Subject: [Charter Amendment]

Creation date: [7/13/2004 6:09:11 PM]

In Folder: [ballot]

Attachment File name: [E:\RemoteOutput\RemoteNTI\pfrazier\10738.2.1-Section 143
Amendment_rev.doc]

Message: [

Here is what I will present to the Mayor tonight for discussion. Underlined is
Mayor's language, Bolded is Peters, double underlined is mine.

]

Charter Amendment to Implement PRC Proposal Related to Amortizing Costs

Section 143: Contributions

The retirement system herein provided for shall be conducted on the contributory plan, the City contributing jointly with the employees affected thereunder. Employees shall contribute according to the actuarial tables adopted by the Board of Administration for normal retirement allowances, except that employees shall, with the approval of the Board, have the option to contribute more than required for normal allowances, and thereby be entitled to receive the proportionate amount of increased allowances paid for by such additional contributions. The City shall contribute annually an amount substantially equal to that required of the employees for normal retirement allowances, as certified by the actuary, but shall not be required to contribute in excess of that amount, except in the case of financial liabilities accruing under any new retirement plan or revised retirement plan because of past service of the employees. The mortality, service, experience or other table calculated by the actuary and the valuation determined by him and approved by the board shall be conclusive and final, and any retirement system established under this article shall be based thereon.

When setting and establishing amortization schedules for the funding of the unfunded accrued actuarial liability, the Board shall place the cost of the past service liability associated with a new retirement benefit increase on no greater than a fixed, straight-line, five year amortization schedule. Effective July 1, 2008, the Board shall place the cost associated with net accumulated actuarial gains and losses on no greater than a fifteen year amortization schedule, except however, this requirement shall not preclude the City from issuing pension obligation bonds containing repayment terms exceeding fifteen years provided the City has obtained concurrence of such terms from the Board. Notwithstanding the above, the Retirement Board shall retain plenary authority and fiduciary responsibility for investment of moneys and administration of the system. Funding obligations of the City shall be determined by the Board on an annual basis and in no circumstance, except for court approved settlement agreements or the issuance of pension obligation bonds, shall the City and the Retirement Board enter into multi-year contracts or agreements relating to future funding of City obligations to the system.